

TRACEY S. COSBY-006922001

ATTORNEY AT LAW, P.C.

134 Evergreen Place, Suite 301

East Orange, New Jersey 07018

(973) 678-8200 Fax (973) 678-0100

Attorney for Defendant Mayor Marty Small

JANE DOE, on behalf of JOHN DOE, her
minor child,

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Case Number 1:21-cv-11189-JHR-SAK

**ANSWER TO THIRD AMENDED
COMPLAINT AND JURY DEMAND**

Plaintiffs,

ET. AL. MARTY SMALL, SR., Et al.

Defendants

Defendant, Marty Small, Sr. Mayor of Atlantic City, (“Mayor”) with his principal
business located at 1301 Bacharach Blvd., Atlantic City, New Jersey by way of Answer to the
Complaint herein states:

I. LOCAL CIVIL RULE 10.1 STATEMENT

This Defendant Admits to the mailing office of Mayor Marty Small, Sr but has
insufficient information and knowledge to form a basis as to the truthfulness as it
relates to the remaining defendants.

JURISDICTION and VENUE

1. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 1 of the Complaint.
2. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 2 of the Complaint.
3. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 3 of the Complaint.
4. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 4 of the Complaint.
5. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 5 of the Complaint.
6. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 6 of the Complaint.

PARTIES

7. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 7 of the Complaint.
8. This Defendant Admits the allegations contained in paragraph 8 of the Complaint.
9. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 9 of the Complaint.
10. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 10 of the Complaint
11. This Defendant has insufficient information and knowledge to form a basis as to

the truthfulness of the allegations contained in the Complaint.

12. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 12 of the Complaint.

13. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 13 of the Complaint.

APPLICABLE LAW AND POLICY

14. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 14 of the Complaint.

15. This Defendant denies the allegations contained in paragraph 15 of the Complaint and leaves the Plaintiff to her proofs.

16. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 16 of the Complaint.

17. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 17 of the Complaint.

18. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 18 of the Complaint.

19. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 19 of the Complaint.

20. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 20 of the Complaint.

21. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 21 of the Complaint.

22. This Defendant denies the allegations contained in paragraph 22 of Count One

of the Complaint.

23. This Defendant Admits the allegations contained in paragraph 23 of the Complaint.

24. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 24 of the Complaint.

25. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 25 of the Complaint.

26. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 26 of the Complaint.

27. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 27 of the Complaint.

GENERAL FACTUAL ALLEGATIONS

28. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 28 of the Complaint.

29. This Defendant Admits to the allegations contained in paragraph 29 of the Complaint to the extent that Marty Small is the current Mayor of Atlantic City.

30. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 30 of the Complaint.

31. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 31 of the Complaint.

32. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 32 of the Complaint.

33. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 33 of the Complaint.

34. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 34 of the Complaint.

35. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 35 of the Complaint.

36. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 36 of the Complaint.

37. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 37 of the Complaint.

38. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 38 of the Complaint.

39. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 39 of the Complaint.

40. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 40 of the Complaint.

41. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 41 of the Complaint.

42. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 42 of the Complaint.

43. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 43 of the Complaint.

44. This Defendant has insufficient information and knowledge to form a basis a to the truthfulness of the allegations contained in paragraph 44 of the Complaint.

45. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegation contained in paragraph 45 of the Complaint.

46. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 46 of the Complaint.

47. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 47 of the Complaint.

48. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 48 of the Complaint.

49. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 49 of the Complaint.

50. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 50 of the Complaint.

51. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 51 of the Complaint.

52. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 52 of the Complaint.

53. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 53 of the Complaint.

54. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 54 of the Complaint.

55. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 55 of the Complaint.

56. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 56 of the Complaint.

57. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 57 of the Complaint.

58. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 58 of the Complaint.

59. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 59 of the Complaint.

60. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 60 of the Complaint.

61. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 61 of the Complaint.

62. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 62 of the Complaint.

63. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 63 of the Complaint.

64. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 64 of the Complaint.

65. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 65 of the Complaint.

66. This Defendant has insufficient information and knowledge to form a basis as to

the truthfulness of the allegations contained in paragraph 66 of the Complaint.

67. This Defendant denies the allegations contained in paragraph 67 of the Complaint as it relates to Mayor and Mrs. Small and leaves the Plaintiff to his proofs.

THE FEDERAL CRIMINAL INVESTIGATION

68. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 68 of the Complaint.

69. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 69 of the Complaint.

70. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 70 of the Complaint.

71. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 71 of the Complaint.

72. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 72 of the Complaint.

73. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 73 of the Complaint.

74. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 74 of the Complaint.

75. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 75 of the Complaint.

76. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 76 of the Complaint.

**ACTUAL KNOWLEDGE OF FRAIZER'S ABUSIVE CONDUCT BY
THE ATLANTIC CITY SCHOOL DISTRICT**

77. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 77 of the Complaint.

78. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 78 of the Complaint.

79. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 79 of the Complaint.

80. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 80 of the Complaint.

81. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 81 of the Complaint.

82. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 82 of the Complaint.

83. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 83 of the Complaint.

84. This Defendant denies the allegations contained in paragraph 84 of the Complaint and leaves the Plaintiff to her proofs.

85. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 85 of the Complaint.

86. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 86 of the Complaint.

87. This Defendant has insufficient information and knowledge to form a basis as to

the truthfulness of the allegations contained in paragraph 87 (a) through (d) of the Complaint.

88. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 88 of the Complaint.

THE EFFECT OF FRAZIER'S ABUSE ON JOHN DOE

89. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 89 of the Complaint.

90. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 90 of the Complaint.

91. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 91 of the Complaint.

92. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 92 of the Complaint.

93. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 93 of the Complaint.

94. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 94 of the Complaint.

95. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 95 of the Complaint.

COUNT I
§ 1983 VIOLATION
FAILURE TO INTERVENE, INVESTIGATE & PROTECT FROM ATTACK
AS TO LAW'QUETTA SMALL AND ESS
(42 U.S.C. § 1983)

96. This Defendant repeats and reasserts each and every Answer contained in paragraphs 1 through 95 as if set forth at length and incorporates the same herein.

97. through 108. This Defendant is neither referred to nor a party to Count One of the Complaint and has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraphs 97 through 108 of the Complaint.

COUNT II
§ 1983 VIOLATION
FAILURE TO TRAIN AND SUPERVISE
AS TO LA'QUETTA SMALL
(42 U.S.C. § 1983)

109. This Defendant repeats and reasserts each and every Answer contained in paragraphs 1 through 108 of the Complaint as if set forth at length and incorporates the same herein.

110. through 126. This Defendant is neither referred to or a party to Count II of the Complaint and has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraphs 110 through 126 of the Complaint.

COUNT III
“MASHA’S LAW” VIOLATIONS
AS TO DEFENDANT KYAN FRAZIER
(U.S.C. § 2255)

127. This Defendant repeats and reasserts each and every Answer contained in paragraphs 1 through 126 of the Complaint as if set forth at length and incorporates the same herein.

128. through 132. This Defendant is neither referred to or a party to Count III of the Complaint and has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraphs 128 through 132 of the Complaint.

COUNT IV
NEGLIGENCE
AS TO ALL DEFENDANTS

133. This Defendant repeats and reasserts each and every Answer contained in paragraphs 1 through 132 of the Complaint as if set forth at length and incorporates the same herein.

134. This Defendant denies the allegations contained in paragraph 134 of the Complaint and leaves the Plaintiff to his proofs.

135. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 135 subsections A, B and D of the Complaint and Denies allegations contained in subsection of C of paragraph 135 of the Complaint and leaves the Plaintiff to her proofs.

136. This Defendant Denies the allegations as they relate to Mayor Small in paragraph 136 of the Complaint and leaves the Plaintiff to her proofs and has insufficient information and knowledge to form a basis as to the truthfulness of the allegations as it relates to other named defendants.

137. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 137 of the Complaint.

138. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 138 of the Complaint.

139. This Defendant Denies the allegations contained in paragraph 139 of the Complaint and leave the Plaintiff to her proofs.

140. This Defendant has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 140 of the Complaint.

141. This Defendant Denies the allegations contained in paragraph 141 of the Complaint and leaves the Plaintiff to her proofs.

142. This Defendant Denies the allegations contained in paragraph 142 as it relates to Mayor Small and has insufficient information and knowledge to form a basis as it relates to the remaining defendants.

COUNT V
GROSS NEGLIGENCE, RECKLESSNESS
AS TO ALL DEFENDANTS

143. This Defendant repeats and reasserts each and every Answer contained in paragraphs 1 through 142 as if set forth at length and incorporates the same herein.

144. This Defendant Denies the allegations contained in paragraph 144 as it relates to Mayor Small and leaves the Plaintiff to her proofs and has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 144 of the Complaint.

145. This Defendant Denies the allegations contained in paragraph 145 as it relates to Mayor Small and leaves the Plaintiff to her proofs and has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 145 of the Complaint.

146. This Defendant denies the allegations contained in paragraph 146 as it relates to Mayor Small and leaves the Plaintiff to her proofs and has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 146 of the Complaint.

147. through 149. This Defendant denies the allegations contained in 147 through 149 of

which 148 is void of text and leave the Plaintiff to her proofs.

COUNT VI
ASSAULT AND BATTERY
AS TO DEFENDANT KYAN FRAZIER

150. This Defendant repeats and reasserts each and every Answer contained in paragraphs 1 through 149 as if set forth at length and incorporates the same herein.

151 through 152. This Defendant is neither named nor referenced in this Count and has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 151 and 152.

COUNT VII
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
AS TO DEFENDANT KAYAN FRAIZER

153. This Defendant repeats and reasserts each and every Answer contained in paragraphs 1 through 153 as if set forth at length and incorporates the same herein.

154 through 158. This Defendant is neither named nor referenced in the Count and has insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraphs 154 through 158.

COUNT VIII
NEGLIGENCE
AS TO ESS

159. This Defendant repeats and reasserts each and every Answer contained in paragraphs 1 through 158 as if set forth at length and incorporates the same herein.

160 through 165. This Defendant is neither named nor referenced in this Count and has

insufficient information and knowledge to form a basis as to the truthfulness of the allegations contained in paragraph 160 through 165.

WHEREFORE, this defendant demands judgment in its favor and against Plaintiff for the cost and attorneys' fees associated with the defense of this law suit.

SEPARATE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Defendant had the right and duty to act as they did under the circumstances alluded to in the complaint filed in this case.

THIRD AFFIRMATIVE DEFENSE

The conduct of defendant was reasonable, proper and without malice.

FOURTH AFFIRMATIVE DEFENSE

Defendant acted reasonably under the then existing circumstances.

FIFTH AFFIRMATIVE DEFENSE

Any injuries and/or damages allegedly sustained by plaintiff were caused by the joint or several negligent and/or intentional acts of third parties over whom this defendant has no control.

SIXTH AFFIRMATIVE DEFENSE

The defendant is immune from suit pursuant to the provisions of N.J.S.A. 59:5-4.

SEVENTH AFFIRMATIVE DEFENSE

The defendant is immune from suit pursuant to the provisions of N.J.S.A. 59:1:1 et seq.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff failed and neglected to give notice of their claim to defendant a public entity within ninety (90) days of accrual of their claim as mandated in N.J.S.A. 59:8-8, or within One (1) year establishing extraordinary circumstances.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's action was commenced prior to the expiration of the period prescribed in N.J.S.A. 59:8-8 as set out above.

TENTH AFFIRMATIVE DEFENSE

The court lacks jurisdiction over the answering defendant because of improper and insufficient process.

ELEVENTH AFFIRMATIVE DEFENSE

Any damages or injuries which may have been sustained by the plaintiff were caused through the sole negligence of the co-defendants or third parties over whom this defendant has no control.

TWELFTH AFFIRMATIVE DEFENSE

Any damages or injuries which may have been sustained by plaintiff were the results of an unavoidable accident insofar as the answering defendant is concerned.

THIRTEENTH AFFIRMATIVE DEFENSE

There was no willfulness involved in any of the events involving the factual basis upon which this suit has been instituted.

FOURTEENTH AFFIRMATIVE DEFENSE

The answering defendant acted under reasonable and probable grounds and without malice, and therefore, is not answerable to the plaintiff in damages.

FIFTEENTH AFFIRMATIVE DEFENSE

The answering defendant acted under reasonable and probable cause under the existing circumstances.

SIXTEENTH AFFIRMATIVE DEFENSE

The answering defendant is immune from liability pursuant to the provisions of N.J.S.A. 59:2-1.

SEVENTEENTH AFFIRMATIVE DEFENSE

The answering defendant is not liable to the plaintiff in that there is no liability upon any public employees pursuant to the provisions of N.J.S.A. 59:2-2(b).

EIGHTEENTH AFFIRMATIVE DEFENSE

Any action or failure to act on the part of the answering defendant was in the nature of discretionary activity within the meaning of N.J.S.A. 59:2-3 and, accordingly no liability may be imposed upon the answering defendants.

NINETEENTH AFFIRMATIVE DEFENSE

The answering defendant is immune by virtue of N.J.S.A. 59:2-6.

TWENTIETH AFFIRMATIVE DEFENSE

Any recovery to which the plaintiff might otherwise be entitled is subject to reduction in accordance with the limitations on damages provided in N.J.S.A 59:9-2.

TWENTY FIRST AFFIRMATIVE DEFENSE

The answering defendant is immune from suit pursuant to the provisions of N.J.S.A. 59:2-10.

TWENTY SECOND AFFIRMATIVE DEFENSE

The answering defendant asserts that it is entitled to complete immunity by virtue of N.J.S.A. 59:4-1.

TWENTY THIRD AFFIRMATIVE DEFENSE

The answering defendant asserts that it is entitled to complete immunity by virtue of N.J.S.A. 59:4-2.

TWENTY FOURTH AFFIRMATIVE DEFENSE

The answering defendant asserts that it is entitled to complete immunity by virtue of N.J.S.A. 59:4-3.

TWENTY FIFTH AFFIRMATIVE DEFENSE

The answering defendant asserts that it is entitled to complete immunity by virtue of N.J.S.A. 59:4-7.

TWENTY SIXTH AFFIRMATIVE DEFENSE

The answering defendant's claim is limited by N.J.S.A. 2a:15-97.

WHEREFORE, this defendant demands judgment in its favor and against the plaintiff for costs and counsel fees associated with the defense of this lawsuit.

ANSWER TO ALL CROSS-CLAIMS

This defendant, by way of an Answer to any and all cross-claims heretofore and hereafter asserted against it, respectively states that it denies each and every allegation contained in any such cross-claim.

TRACEY S. COSBY, P.C.
Attorney for City of Atlantic City

/s/ Tracey S. Cosby

TRACEY S. COSBY

DATED: April 27, 2023

JURY DEMAND

Demand is hereby made for trial by jury on all issues.

DESIGNATION OF TRIAL COUNSEL

PLEASE TAKE NOTICE, that notice is given that TRACEY S.
COSBY, ESQ., is designated as trial counsel in this matter.

TRACEY S. COSBY, P.C.
Attorneys for Defendant City of Atlantic City

/s/ Tracey S. Cosby
By: _____
TRACEY S. COSBY

DATED: April 27, 2023